

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 876

Introduced by Assembly Member Valadao

February 17, 2011

An act to amend Section ~~12300~~ 12305.87 of the Welfare and Institutions Code, relating to in-home supportive services.

LEGISLATIVE COUNSEL'S DIGEST

AB 876, as amended, Valadao. In-Home Supportive Services program.

Existing law provides for the county-administered In-Home Supportive Services (IHSS) program, under which qualified aged, blind, and disabled persons receive services enabling them to remain in their own homes. *Existing law prohibits a person from providing supportive services if he or she has been convicted of specified crimes in the previous 10 years. Existing law authorizes a recipient of services who wishes to employ a provider applicant who has been convicted of a specified offense to submit to the county a prescribed individual waiver, signed by the recipient, or by the recipient's authorized representative, and returned to the county welfare department.*

~~This bill would make a technical, nonsubstantive change to these provisions.~~

This bill would prohibit a provider applicant from signing his or her own individual waiver form as the recipient's authorized representative.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 12305.87 of the Welfare and Institutions*
2 *Code is amended to read:*

3 12305.87. (a) (1) Commencing 90 days following the effective
4 date of the act that adds this section, a person specified in paragraph
5 (2) shall be subject to the criminal conviction exclusions provided
6 for in this section, in addition to the exclusions required under
7 Section 12305.81.

8 (2) This section shall apply to a person who satisfies either of
9 the following conditions:

10 (A) He or she is a new applicant to provide services under this
11 article.

12 (B) He or she is an applicant to provide services under this
13 article whose application has been denied on the basis of a
14 conviction and for whom an appeal of that denial is pending.

15 (b) Subject to subdivisions (c), (d), and (e), an applicant subject
16 to this section shall not be eligible to provide or receive payment
17 for providing supportive services for 10 years following a
18 conviction for, or incarceration following a conviction for, any of
19 the following:

20 (1) A violent or serious felony, as specified in subdivision (c)
21 of Section 667.5 of the Penal Code and subdivision (c) of Section
22 1192.7 of the Penal Code.

23 (2) A felony offense for which a person is required to register
24 under subdivision (c) of Section 290 of the Penal Code. For
25 purposes of this ~~subparagraph~~ *paragraph*, the 10-year time period
26 specified in this section shall commence with the date of conviction
27 for, or incarceration following a conviction for, the underlying
28 offense, and not the date of registration.

29 (3) A felony offense described in paragraph (2) of subdivision
30 (c) or paragraph (2) of subdivision (g) of Section 10980.

31 (c) Notwithstanding subdivision (b), an application shall not be
32 denied under this section if the applicant has obtained a certificate
33 of rehabilitation under Chapter 3.5 (commencing with Section
34 4852.01) of Title 6 of Part 3 of the Penal Code or *if* the information
35 or accusation against him or her has been dismissed pursuant to
36 Section 1203.4 of the Penal Code.

37 (d) (1) Notwithstanding subdivision (b), a recipient of services
38 under this article who wishes to employ a provider applicant who

1 has been convicted of an offense specified in subdivision (b) may
2 submit to the county an individual waiver of the exclusion provided
3 for in this section. This paragraph shall not be construed to allow
4 a recipient to submit an individual waiver with respect to a
5 conviction or convictions for offenses specified in Section
6 12305.81.

7 (2) The county shall notify a recipient who wishes to hire a
8 person who is applying to be a provider and who has been
9 convicted of an offense subject to exclusion under this section of
10 that applicant's relevant criminal offense convictions that are
11 covered by subdivision (b). The notice shall include both of the
12 following:

13 (A) A summary explanation of the exclusions created by
14 subdivision (b), as well as the applicable waiver process described
15 in this subdivision and the process for an applicant to seek a general
16 exception, as described in subdivision (e). This summary
17 explanation shall be developed by the department for use by all
18 counties.

19 (B) An individual waiver form, which shall also be developed
20 by the department and used by all counties. The waiver form shall
21 include both of the following:

22 (i) A space for the county to include a reference to any Penal
23 Code sections and corresponding offense names or descriptions
24 that describe the relevant conviction or convictions that are covered
25 by subdivision (b) and that the provider applicant has in his or her
26 background.

27 (ii) A statement that the service recipient, or his or her authorized
28 representative, if applicable, is aware of the applicant's conviction
29 or convictions and agrees to waive application of this section and
30 employ the applicant as a provider of services under this article.

31 (3) To ensure that the initial summary explanation referenced
32 in this subdivision is comprehensible for recipients and provider
33 applicants, the department shall consult with representatives of
34 county welfare departments and advocates for, or representatives
35 of, recipients and providers in developing the summary explanation
36 and offense descriptions.

37 (4) The individual waiver form shall be signed by the recipient,
38 or by the recipient's authorized representative, if applicable, and
39 returned to the county welfare department by mail or in person. *A*
40 *provider applicant shall not sign his or her own individual waiver*

1 *form as the recipient's authorized representative.* The county shall
2 retain the waiver form and a copy of the provider applicant's
3 criminal offense record information search response until the date
4 that the convictions that are the subject of the waiver request are
5 no longer within the 10-year period specified in subdivision (b).

6 (5) An individual waiver submitted pursuant to this subdivision
7 shall entitle a recipient to hire a provider applicant who otherwise
8 meets all applicable enrollment requirements for the In-Home
9 Supportive Services program. A provider hired pursuant to an
10 individual waiver may be employed only by the recipient who
11 requested that waiver, and the waiver shall only be valid with
12 respect to convictions that are specified in that waiver. A new
13 waiver shall be required if the provider is subsequently convicted
14 of an offense to which this section otherwise would apply. A
15 provider who wishes to be listed on a provider registry or to provide
16 supportive services to a recipient who has not requested an
17 individual waiver shall be required to apply for a general exception,
18 as provided for in subdivision (e).

19 (6) Nothing in this section shall preclude a provider who is
20 eligible to receive payment for services provided pursuant to an
21 individual waiver under this subdivision from being eligible to
22 receive payment for services provided to one or more additional
23 recipients who obtain waivers pursuant to this same subdivision.

24 (7) The state and a county shall be immune from any liability
25 resulting from granting an individual waiver under this subdivision.

26 (e) (1) Notwithstanding subdivision (b), an applicant who has
27 been convicted of an offense identified in subdivision (b) may seek
28 from the department a general exception to the exclusion provided
29 for in this section.

30 (2) Upon receipt of a general exception request, the department
31 shall request a copy of the applicant's criminal offender record
32 information search response from the applicable county welfare
33 department. Notwithstanding any other provision of law, the county
34 shall provide a copy of the criminal offender record information
35 search response, as provided to the county by the Department of
36 Justice, to the department. The county shall provide this
37 information in a manner that protects the confidentiality and
38 privacy of the criminal offender record information search
39 response. The state or federal criminal history record information

1 search response shall not be modified or altered from its form or
2 content as provided by the Department of Justice.

3 (3) The department shall consider the following factors when
4 determining whether to grant a general exception under this
5 subdivision:

6 (A) The nature and seriousness of the conduct or crime under
7 consideration and its relationship to employment duties and
8 responsibilities.

9 (B) The person's activities since conviction, including, but not
10 limited to, employment or participation in therapy education, or
11 community service, that would indicate changed behavior.

12 (C) The number of convictions and the time that has elapsed
13 since the conviction or convictions.

14 (D) The extent to which the person has complied with any terms
15 of parole, probation, restitution, or any other sanction lawfully
16 imposed against the person.

17 (E) Any evidence of rehabilitation, including character
18 references, submitted by the person, or by others on the person's
19 behalf.

20 (F) Employment history and current or former employer
21 recommendations. Additional consideration shall be given to
22 employer recommendations provided by a person who has received
23 or has indicated a desire to receive supportive or personal care
24 services from the applicant, including, but not limited to, those
25 services, specified in Section 12300.

26 (G) Circumstances surrounding the commission of the offense
27 that would demonstrate the unlikelihood of repetition.

28 (H) The granting by the Governor of a full and unconditional
29 pardon.

30 (f) If the department makes a determination to deny an
31 application to provide services pursuant to a request for a general
32 exception, the department shall notify the applicant of this
33 determination by either personal service or registered mail. The
34 notice shall include the following information:

35 (1) A statement of the department's reasons for the denial that
36 evaluates evidence of rehabilitation submitted by the applicant, if
37 any, and that specifically addresses any evidence submitted relating
38 to the factors in paragraph (3) of subdivision (e).

39 (2) A copy of the applicant's criminal offender record
40 information search response, even if the applicant already has

1 received a copy pursuant to Section 12301.6 or 12305.86. The
2 department shall provide this information in a manner that protects
3 the confidentiality and privacy of the criminal offender record
4 information search response.

5 (A) The state or federal criminal history record shall not be
6 modified or altered from its form or content as provided by the
7 Department of Justice.

8 (B) The department shall retain a copy of each individual's
9 criminal offender record information search response until the date
10 that the convictions that are the subject of the exception are no
11 longer within the 10-year period specified in subdivision (b), and
12 shall record the date the copy of the response was provided to the
13 individual and the department.

14 (C) The criminal offender record information search response
15 shall not be made available by the department to any individual
16 other than the provider applicant.

17 (g) (1) Upon written notification that the department has
18 determined that a request for exception shall be denied, the
19 applicant may request an administrative hearing by submitting a
20 written request to the department within 15 business days of receipt
21 of the written notification. Upon receipt of a written request, the
22 department shall hold an administrative hearing consistent with
23 the procedures specified in Section 100171 of the Health and Safety
24 Code, except where those procedures are inconsistent with this
25 section.

26 (2) A hearing under this subdivision shall be conducted by a
27 hearing officer or administrative law judge designated by the
28 director. A written decision shall be sent by certified mail to the
29 applicant.

30 (h) The department shall revise the provider enrollment form
31 developed pursuant to Section 12305.81 to include both of the
32 following:

33 (1) The text of subdivision (c) of Section 290 of the Penal Code,
34 subdivision (c) of Section 667.5 of the Penal Code, subdivision
35 (c) of Section 1192.7 of the Penal Code, and paragraph (2) of
36 subdivisions (c) and (g) of Section 10980.

37 (2) A statement that the provider understands that if he or she
38 has been convicted, or incarcerated following conviction for, any
39 of the crimes specified in the provisions identified in paragraph
40 (b) in the last 10 years, and has not received a certificate of

1 rehabilitation or had the information or accusation dismissed, as
2 provided in subdivision (c), he or she shall only be authorized to
3 receive payment for providing in-home supportive services under
4 an individual waiver or general exception as described in this
5 section, and upon meeting all other applicable criteria for
6 enrollment as a provider in the program.

7 (i) (1) Notwithstanding the rulemaking provisions of the
8 Administrative Procedure Act (Chapter 3.5 (commencing with
9 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
10 Code), the department may implement and administer this section
11 through all-county letters or similar instructions from the
12 department until regulations are adopted. The department shall
13 adopt emergency regulations implementing these provisions no
14 later than July 1, 2011. The department may readopt any emergency
15 regulation authorized by this section that is the same as or
16 substantially equivalent to an emergency regulation previously
17 adopted under this section.

18 (2) The initial adoption of emergency regulations pursuant to
19 this section and one readoption of emergency regulations shall be
20 deemed an emergency and necessary for the immediate
21 preservation of the public peace, health, safety, or general welfare.
22 Initial emergency regulations and the one readoption of emergency
23 regulations authorized by this section shall be exempt from review
24 by the Office of Administrative Law. The initial emergency
25 regulations and the one readoption of emergency regulations
26 authorized by this section shall be submitted to the Office of
27 Administrative Law for filing with the Secretary of State and each
28 shall remain in effect for no more than 180 days, by which time
29 final regulations may be adopted.

30 (j) In developing the individual waiver form and all-county
31 letters or information notices or similar instructions, the department
32 shall consult with stakeholders, including, but not limited to,
33 representatives of the county welfare departments, and
34 representatives of consumers and providers. The consultation shall
35 include at least one in-person meeting prior to the finalization of
36 the individual waiver form and all-county letters or information
37 notices or similar instructions.

38 ~~SECTION 1. Section 12300 of the Welfare and Institutions~~
39 ~~Code is amended to read:~~

1 ~~12300. (a) The purpose of this article is to provide in every~~
2 ~~county in a manner consistent with this chapter and the annual~~
3 ~~Budget Act those supportive services identified in this section to~~
4 ~~aged, blind, or disabled persons, as defined under this chapter,~~
5 ~~who are unable to perform the services themselves and who cannot~~
6 ~~safely remain in their homes or abodes of their own choosing unless~~
7 ~~these services are provided.~~

8 ~~(b) Supportive services shall include domestic services and~~
9 ~~services related to domestic services, heavy cleaning, personal~~
10 ~~care services, accompaniment by a provider when needed during~~
11 ~~necessary travel to health-related appointments or to alternative~~
12 ~~resource sites, yard hazard abatement, protective supervision,~~
13 ~~teaching and demonstration directed at reducing the need for other~~
14 ~~supportive services, and paramedical services which make it~~
15 ~~possible for the recipient to establish and maintain an independent~~
16 ~~living arrangement.~~

17 ~~(c) Personal care services shall mean all of the following:~~

18 ~~(1) Assistance with ambulation.~~

19 ~~(2) Bathing, oral hygiene, and grooming.~~

20 ~~(3) Dressing.~~

21 ~~(4) Care and assistance with prosthetic devices.~~

22 ~~(5) Bowel, bladder, and menstrual care.~~

23 ~~(6) Repositioning, skin care, range of motion exercises, and~~
24 ~~transfers.~~

25 ~~(7) Feeding and assurance of adequate fluid intake.~~

26 ~~(8) Respiration.~~

27 ~~(9) Assistance with self-administration of medications.~~

28 ~~(d) Personal care services are available if these services are~~
29 ~~provided in the beneficiary's home and other locations as may be~~
30 ~~authorized by the director. Among the locations that may be~~
31 ~~authorized by the director under this paragraph is the recipient's~~
32 ~~place of employment if all of the following conditions are met:~~

33 ~~(1) The personal care services are limited to those that are~~
34 ~~currently authorized for a recipient in the recipient's home and~~
35 ~~those services are to be utilized by the recipient at the recipient's~~
36 ~~place of employment to enable the recipient to obtain, retain, or~~
37 ~~return to work. Authorized services utilized by the recipient at the~~
38 ~~recipient's place of employment shall be services that are relevant~~
39 ~~and necessary in supporting and maintaining employment.~~
40 ~~However, workplace services shall not be used to supplant any~~

1 reasonable accommodations required of an employer by the federal
2 Americans with Disabilities Act (42 U.S.C. Sec. 12101 et seq.;
3 ADA) or other legal entitlements or third-party obligations.

4 (2) ~~The provision of personal care services at the recipient's~~
5 ~~place of employment shall be authorized only to the extent that~~
6 ~~the total hours utilized at the workplace are within the total personal~~
7 ~~care services hours authorized for the recipient in the home.~~
8 ~~Additional personal care services hours may not be authorized in~~
9 ~~connection with a recipient's employment.~~

10 (e) ~~Where supportive services are provided by a person having~~
11 ~~the legal duty pursuant to the Family Code to provide for the care~~
12 ~~of his or her child who is the recipient, the provider of supportive~~
13 ~~services shall receive remuneration for the services only when the~~
14 ~~provider leaves full-time employment or is prevented from~~
15 ~~obtaining full-time employment because no other suitable provider~~
16 ~~is available and where the inability of the provider to provide~~
17 ~~supportive services may result in inappropriate placement or~~
18 ~~inadequate care.~~

19 These providers shall be paid only for the following:

20 (1) ~~Services related to domestic services.~~

21 (2) ~~Personal care services.~~

22 (3) ~~Accompaniment by a provider when needed during necessary~~
23 ~~travel to health-related appointments or to alternative resource~~
24 ~~sites.~~

25 (4) ~~Protective supervision only as needed because of the~~
26 ~~functional limitations of the child.~~

27 (5) ~~Paramedical services.~~

28 (f) ~~To encourage maximum voluntary services, so as to reduce~~
29 ~~governmental costs, respite care shall also be provided. Respite~~
30 ~~care is temporary or periodic service for eligible recipients to~~
31 ~~relieve persons who are providing care without compensation.~~

32 (g) ~~A person who is eligible to receive a service or services~~
33 ~~under an approved federal waiver authorized pursuant to Section~~
34 ~~14132.951, or a person who is eligible to receive a service or~~
35 ~~services authorized pursuant to Section 14132.95, shall not be~~
36 ~~eligible to receive the same service or services pursuant to this~~
37 ~~article. In the event that the waiver authorized pursuant to Section~~
38 ~~14132.951, as approved by the federal government, does not extend~~
39 ~~eligibility to all persons otherwise eligible for services under this~~
40 ~~article, or does not cover a service or particular services, or does~~

1 not cover the scope of a service that a person would otherwise be
2 eligible to receive under this article, those persons who are not
3 eligible for services, or for a particular service under the waiver
4 or Section 14132.95 shall be eligible for services under this article.

5 (h) (1) All services provided pursuant to this article shall be
6 equal in amount, scope, and duration to the same services provided
7 pursuant to Section 14132.95, including any adjustments that may
8 be made to those services pursuant to subdivision (e) of Section
9 14132.95.

10 (2) Notwithstanding any other provision of this article, the rate
11 of reimbursement for in-home supportive services provided through
12 any mode of service shall not exceed the rate of reimbursement
13 established under subdivision (j) of Section 14132.95 for the same
14 mode of service unless otherwise provided in the annual Budget
15 Act.

16 (3) The maximum number of hours available under Section
17 14132.95, Section 14132.951, and this section, combined, shall
18 be 283 hours per month. Any recipient of services under this article
19 shall receive no more than the applicable maximum specified in
20 Section 12303.4.